1969, Wesberry v.Sanders, 376 U.S. 1, 1964, U.S.C. § 19731 c(1)).

Appellee Tartaglion's counsel described laws governing Philadelphia's voting systems as "reasonable" and "even-handed". However, these assurances and counsel's further claims of "safeguards" as described in appellee's brief (Pages 22 and 23) do not provide unobstructed access to a ballot or bring meaningful transparency to the voting process, and therefore do not comply with the federal laws and the Constitution.

Access to and use of a secure polling place is not only a right, but an obligation. In Burson v. Freeman, 504 US 191, 206 (1992) the Court said,

> "In sum, an examination of the history of election regulation in this country reveals a persistent battle against two evils: voter intimidation and election fraud. After an unsuccessful experiment with an unofficial ballot system, all 50 States, together with numerous other Western democracies, settled on the same solution: a secret ballot secured in part by a restricted zone around the voting compartments. We find that this widespread and time-tested consensus demonstrates that some restricted zone is necessary in order to serve the States' compelling interests in preventing voter intimidation and election fraud."

Voting by absentee provides no protection from intimidation, threats, or coercion. Voter intimidation is prohibited under 42 U.S.C. §1973i. Prohibited acts,

> "(b) Intimidation, threats, or coercion - No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers

or duties under section 1973a (a), 1973d, 1973f, 1973g, 1973h, or 1973j(e) of this title."

Voting by machine stands in violation of 42 U.S.C. § 1973i(a) "Failure or refusal to permit casting or tabulation of vote". In United States v. Mosley, 8 U.S. 383, (1915) the Court decided, "The right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box." The use of DREs, Internet voting, and lever machines constitutes "refusal to permit casting" or "put a ballot in a box" as these machines do not allow the voters access to physical ballot, to directly mark a ballot, or to cast a ballot. The voters can make inputs to the machine, but it is the machine - not the voter - that produces the results (i.e., records the inputs and counts the votes).

Voters have the constitutional right to vote free from obstacles such as literacy tests and other practices and devices that once were required by state legislatures and election officials as a prerequisite or precondition to voting. (South Carolina v. Katzenbach, 383 U.S. 301(1966) and Allen v. Board of Elections, 42 U.S.C. § 1973b). Voting machines constitute just such an obstacle. A voting machine, such as a DRE, can be an unfamiliar and inhibiting device, unlike a pen or pencil. The use of voting machines is a precondition for voting in that citizens must be able to operate the machine in order to vote. These machines stand as a physical and emotional obstacle between the voter and their ballot.

"The terms 'vote' or 'voting' includes all action necessary to make a vote effective in any primary, special, or general election." (42 U.S.C. § 1973l (c)(1). In Bush v. Gore the Supreme Court wrote, "A 'legal vote,' as determined by the (Florida) Supreme Court, is one in which there is a 'clear indication of the intent of the voter'." The Court accepted that definition as, "unobjectionable as an abstract proposition and a starting principle." The use of absentee ballots (where the absentee voter can be intimidated by others and ballots can be easily tampered with) and voting machines (which are obstructive, non-transparent, easy to rig, and impossible to safeguard), prevent citizens from making their votes "effective" or knowing if their votes were counted at all. The use of lever

machines or DREs (touchscreens or push buttons) prevents the voter from directly creating or casting a "legal vote" as a "clear indication" of their intent. The same could be said of the output of a ballot scanner. Any result produced by a voting machine is evidence that the machine did something. However, it is circumstantial or "not clear" evidence of the voter's intent.

A ballot is the official record of an individual voter's votes. A machine-produced record or list of all the citizens' votes is not a ballot. Implicit in the Constitution is the right to a recount of ballots. In Roudebush v. Hartke, 405 U.S. 15 (1972), the U.S. Supreme Court ruled,

> "... one procedure necessary to guard against irregularity and error in the tabulation of votes is the availability of a recount. Despite the fact that a certificate of election may be issued to the leading candidate within 30 days after the election, the results are not final if a candidate's option to compel a recount is exercised."

The issue of ballots and contested elections (recounts) is also addressed in 1 U.S.C. § 5 and in 26 Am Jur 2nd § 444,

> "In an election contest the ballots themselves constitute the highest and best evidence of the will of the electors, provided they have been duly preserved and protected from unauthorized tampering, and recourse may be had to the ballots themselves in order to determine how the electors actually voted. However, one who relies on overcoming the prima facie correctness of the official canvass by a resort to ballots must first show that the ballots as presented to the court are ***intact*** and genuine." (Emphasis added by appellant).

Does failure to comply with federal voting requirements violate the Equal Protection Clause? Yes, the Supreme Court found in Bush v. Gore, 531 US 98 (2000), "...whether the use of standardless manual recounts violates the Equal Protection and Due Process Clauses. With respect to the equal protection

question, we find a violation of the Equal Protection Clause." In Roudebush v. Hartke, 405 U.S. 15 (1972) the U.S. Supreme Court ruled, "...one procedure necessary to guard against irregularity and error in the tabulation of votes is the availability of a recount". The use of paperless voting technology (which does not produce ballots), not only represents a "standardless manual recount", it represents no ability to recount ballots in any meaningful manner since no ***intact*** ballots exist; in fact no ballots exist at all, just a record or list of votes.

Congress also set clear requirements for observing the voting process in the oversight function of Federal observers in 42 U.S.C. § 1973f,

> "Observers at elections; assignment; duties; reports: Whenever an examiner is serving under subchapters I-A to I-C of this title in any political subdivision, the Director of the Office of Personnel Management may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated."

However, when voting machines and absentee ballots are used it is physically impossible for Federal Observers to observe "whether persons who are entitled to vote are being permitted to vote, and ...whether votes cast by persons entitled to vote are being properly tabulated."

This point was affirmed by Nelldean Monroe, Voting Rights Program Administrator for the U.S. Office of Personnel Management (OPM) who addressed the issue of oversight of the voting process in a November 21, 2002 e-mail to Plaintiff. Her agency is responsible for recruiting and training Federal Observers

who are sent by the Department of Justice (DOJ) to monitor elections. Monroe wrote,

> "The only observance of the tallying of the votes is when DOJ specifically requests observers to do so. This rarely occurs, but when it does, it is most often during the day following the election when a County conducts a canvass of challenged or rejected ballots. In this case, Federal observers may observe the County representatives as they make determinations on whether to accept a challenged or rejected ballot. ***Federal observers may also observe the counting of the ballots (or vote tallying) when paper ballots are used."*** (Emphasis added by appellant).

In an earlier phone conversation with appellant, Ms. Monroe said that she could not train Federal Observers to observe if voting machines manipulate or switch votes because the functioning of the machines is inherently unobservable.

As a journalist, appellant has a First Amendment right to observe the voting process in a meaningful manner. Poll watchers perform a similar function. Transparency is essential for the integrity and legality of the process. In Tiryak v. Jordan, 472 F. Supp. 822, 824 (ED Pa. 1979), the Court ruled, "...the poll-watcher's function is to guard the integrity of the vote. No activity is more indelibly a public function than the holding of a political election." The roll of the poll watcher to oversee the voting process and to ensure the proper administration of the voting process is amply supported under federal law. That roll is reported in U.S. Constitution: Annotations p.18, § 4. Elections, Clause 1. Congressional Power to Regulate, Federal Legislation Protecting Electoral Process,

> "More recently, Congress has enacted, in 1957, 1960, 1964, 1965, 1968, 1970, 1975, 1980, and 1982, legislation to protect the right to vote in all elections, federal, state, and local, through the assignment of federal registrars and poll watchers, suspension of literacy and other tests, and the broad proscription of intimidation and reprisal, whether with or without state action."

Although appellant did not attempt to prove specific vote fraud in Philadelphia, she did provide substantial material in her complaint, attachments, responses, and appeal that the use of voting machines and absentee ballots destroys the integrity of the election process, including the following government reports:

a) The Government Accounting Office (GAO), October 2001, state, reports "...some officials promote reforms such as early voting to enhance the accessibility of the electoral process to the general public, while others claim such a move could open the door to voter fraud and thus may come at the price of the integrity of the election system."

b) The Congressional Research Service Report to Congress, September 25, 2003, stated, "While the percentage of votes cast by absentee or mail ballot has been increasing in recent elections, some observers have expressed concerns that the method is more vulnerable to certain kinds of fraud and coercion of voters than is balloting at the polling place. Some have criticized early voting as distorting the electoral process and being open to certain kinds of fraud and abuse."

c) The Congressional Research Service (CRS), November 4, 2003 concluded in a report, "Given the worsening threat environment for information technology and the findings of several studies and analysis discussed in this report, at least some current DREs clearly exhibit security vulnerabilities. The potential threats and vulnerabilities associated with DREs (touchscreen and push button) are substantially greater that those associated with punchcard or optical scan readers, both because DREs are more complex and because they have no independent records of the votes cast."

4. CONSIDERATIONS OF CONVENIENCE

Considerations of increased voter participation, privacy, or convenience for absentee voters and disabled voters do not supersede appellant's voting rights. Although voting machines and absentee voting have been promoted as a convenience for election officials and voters alike, the U.S. Supreme Court has decided that convenience does not supersede a citizen's fundamental rights. Writing for the majority in Tennessee v. Lane (2004), Justice John Paul Stevens ruled, "...states may not justify infringement on fundamental rights by pointing to the administrative convenience or cost savings achieved by maintaining barriers to the enjoyment of those rights."

Voting is a right and a responsibility, very similar to performing jury duty where citizens must be present in order to participate. For example, military personnel can serve on a jury if they are 'in town', but no one has ever suggest that they have right to be on a jury via satellite or participate through some other remote process. State can take steps to make voting as convenient as possible without violating the law by make the process unobservable.

5. RELATED LITIGATION

In 1905 the Michigan Supreme Court concluded that a vote cast by use of a voting machine, where it was secret, a free choice of candidates given, and a correct record of the vote made, was a vote given by ballot. (Detroit v. Board of Inspectors, 139 Mich. 548; 102 N.W. 1029; (1905)). The same conclusion was reached in 1914, Empire Voting Machine Company v. Carroll., 78 Wash. 83; 138 P. 306; (1914)), "We do not deem it necessary to rehearse these discussions or to treat the question other than as a proposition settled by the great weight of authority; that is, that a vote registered by a machine is a vote by ballot." For all the reasons stated in this appeal, appellant respectfully disagrees with these two decisions.

Recent litigation against states and counties over the issue of

voting machines has been based on the citizens' right to a voter-verified paper ballot or trail. (Weber v. Shelly, 347 F.3d 1101, 9th Cir. (2003)) However, voter verification of the output of a machine is not the same as the voter actually voting. For poll watchers, Federal Observers, or journalists, there is no effective opportunity to determine if a vote produced by a machine is a clear indication of the intent of the voter or the result of a machine (which may be adding, subtracting, or switching votes either by accident or design). Whatever is produced by a machine is circumstantial evidence, not direct evidence, of what the voter intended.

Other lawsuits have claimed discrimination based on voting equipment usage, contending that some voting machines are more accurate than others. (Southwest Voter Registration Educatic n Project v. Shelley,344 F.3d 914 (9th Cir.2003)). Appellant believes that these cases miss the point in law. There has been considerable public discussion and claims made as to the accuracy of voting machines. The accuracy of paperless voting machines is impossible to determine as no hard evidence exists when the ballots are electronic and the voting is in secret. Although qualified voters have the right under federal law to have ballots "properly counted", appellant could not find that the accuracy of the count enjoys the same degree of legal protection under federal statutes or case law.

In Davidowitz v. Philadelphia County, 324 Pa. 17 (1936) the Court stated, "These (voting) machines expedite the count, are helpful in reducing the possibility of election frauds, and their employment should be encouraged." Although no evidence supporting this allegation is evident in the case, this quote was used in 25 Am Jur 2nd § 96 and in 2004 by the Ninth Circuit in Weber v. Kevin Shelley. In Davidowitz v. Philadelphia, the Court went on to claim, "They (voting machines) have been installed in the various counties at great expense and by vote of a majority of the electors thereof. A court, therefore, should not restrain their use unless a legislative or constitutional provision is clearly violated." Appellant asserts that such a violation has taken place and convenience of cost does not supersede the right to vote and to

have votes counted properly.

6. COSTS TAXED AGAINST APPELLANT

The Third Circuit Court of Appeals abused their discretion by taxing appellees' costs against appellant. The Court did not refer to the U.S. Supreme Court's interpretation of the Rule 54 standard and Title 42 § 1973l(e) in Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978) and Fogerty v. Fantasy, Inc. (92-1750), 510 U.S. 517 (1994). The U.S. Supreme Court stated in Christiansburg that losing plaintiffs are not to be penalized in civil rights cases unless,

> "...the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith....To take the further step of assessing attorney's fees against plaintiffs simply because they do not finally prevail would substantially add to the risks inhering in most litigation and would undercut the efforts of Congress to promote the vigorous enforcement of the provisions of Title VII."

That position was reaffirmed by the Chief Justice of the U. S. Supreme Court Justice William Rehnquist in Fogerty v. Fantasy,

> "We had earlier held, interpreting the cognate provision of Title II of that Act, 42 U.S.C. § 2000a-3(b), that a prevailing plaintiff "should ordinarily recover an attorney's fee unless some special circumstances would render such an award unjust." Newman v. Piggie Park., 390 U.S. 400, 402 (1968). This decision was based on what we found tb be the important policy objectives of the Civil Rights statutes, and the intent of Congress to achieve such objectives through the use of plaintiffs as "`private attorney[s] general.' " Ibid. In Christiansburg, supra, we determined that the same policy considerations were not at work in the case of a prevailing civil rights defendant. We noted that a Title VII plaintiff, like a Title II plaintiff in

> Piggie Park, is "the chosen instrument of Congress to vindicate 'a policy that Congress considered of the highest priority.' " 434 U. S., at 418. We also relied on the admittedly sparse legislative history to indicate that different standards were to be applied to successful plaintiffs than to successful defendants."

To tax costs against the appellant is against the spirit and intent of federal legislation and U.S. Supreme Court decisions. What is the point of allowing plaintiffs access to the courts, as well as cost relief and cost containment through such mechanisms as declaring pauper status and proceeding pro se, if plaintiffs are to be taxed with the defendants' costs if they do not prevail? It would clearly have a chilling effect on future civil rights litigation.

7. CONCLUSION

Meaningful voter participation, effective oversight, and full enforcement of voting rights are the keys to a functioning and transparent democracy. Although Americans have been using voting machines and absentee ballots for well over a century, the longevity of any custom or practice does not confer legitimacy. The use of voting machines and absentee ballots are potent weapons that can be used to manipulate election results and control the government.

The U.S. Congress, Commonwealth of Pennsylvania, and City of Philadelphia have enacted laws and adopted policies that unlawfully deny Plaintiff the most important right of citizenship, the right to vote and to have votes counted properly.

The use of voting machines and absentee voting should be declared a violation of the U.S. Constitution and federal law. The Plaintiff is the proper person and federal court is the proper place to seek this remedy.

For all the foregoing reasons, Plaintiff respectfully requests that the decision of the Third Court of Appeals be overturned.

Lynn E. Landes, Pro Se
Dated this 20th Day of January, 2006

I am the Appellant in the above action and I do hereby certify that the foregoing is true to the best of my knowledge.

Lynn E. Landes, Pro Se
217 S. Jessup Street
Philadelphia, Pennsylvania 19107
(215) 629-3553

* A certificate of service accompanied this petition.

IN THE UNITED STATES SUPREME COURT

Lynn E. Landes,
Plaintiff-Appellant, Pro Se

v.

MARGARET TARTAGLIONE, in her official capacity as Chair of the City commissioners of Philadelphia; PEDRO A. CORTES, in his official capacity as Secretary of the Commonwealth of Pennsylvania; ALBERTO GONZALES, in his official capacity as the Attorney General of the United States, Defendants-Appellees

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On Petition for Writ of Certiorari to United States Court of Appeals for the Third Circuit, No. 04-4421 & 04-4439

APPENDIX

Lynn E. Landes, Pro Se
217 South Jessup Street
Philadelphia, Pennsylvania 19107
(215) 629-3553

MEMORANDUMS, OPINIONS, AND ORDERS

(U.S. District Court for the Eastern District of Pennsylvania and U.S. Court of Appeals for the Third Circuit)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYNN E. LANDES	:	**CIVIL ACTION**
	:	
v.	:	**NO. 04-CV-3164**
	:	
MARGARET TARTAGLIONE, *IN HER OFFICIAL CAPACITY AS CHAIR OF THE CITY COMMISSIONERS OF PHILADELPHIA*, et al.	:	

ORDER

AND NOW, this12th day of October, 2004, upon consideration of Plaintiff's Request for a Temporary Restraining Order and the Hearing on October 12, 20004, it is **ORDERED** that the request for a Temporary Restraining Order is **DENIED.**

FILED OCT 12 2004

BY THE COURT:

BRUCE W. KAUFFMAN, J.

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1 In evaluating a request for a temporary restraining order, the Court should balance the following factors: (1) the likelihood that the moving party will prevail on the merits at final hearing; (2) the extent to which the moving party will suffer irreparable injury in the absence of relief; (3) the extent to which the nonmoving party will suffer irreparable injury if the preliminary injunction is issued; and (4) the public interest. See Council of Alternative Political Parties v. Hooks, 121 F.3d 876, 879 (3d cir. 1997). These factors weigh heavily against the granting of a temporary restraining order in the above-captioned case.

EPS-1 OCTOBER 26, 2004

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
C.A. No. 04-4021

LYNN E. LANDES,
v.
MARGARET TARTAGLIONE, et al

(E.D. Pa. Civ. No. 04-CV-03164)

Present: SLOVITER, ALITO AND SMITH, CIRCUIT JUDGES

Submitted By the Clerk for possible dismissal due to a jurisdictional defect, in the above-captioned case.

Respectfully,

Clerk

MMW/CAD/par

ORDER

The foregoing appeal is dismissed for lack of appellate jurisdiction. See Robinson v. Lehman, 771 F.2d 772, 782 (3d Cir. 1985) ("denial of a temporary restraining order is not generally appealable unless its denial decides the merits of the case or is equivalent to a dismissal of the claim"). The order appealed here does not dismiss all claims as to all parties and is not certified by the District Court under Federal Rule of Civil Procedure 54(b).

By the Court,

/s/ Dolores K. Sloviter
Circuit Judge

Dated: October 28, 2004
Par/cc: Ms. L.L.
E.M.B., Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYNN E. LANDES	:	**CIVIL ACTION**
	:	
v.	:	**NO. 04-CV-3164**
	:	
MARGARET TARTAGLIONE, *IN HER OFFICIAL CAPACITY AS CHAIR OF THE CITY COMMISSIONERS OF PHILADELPHIA*, et al.	:	

FILED OCT 26 2004

MEMORANDUM AND ORDER

Kauffman, J. **October 25, 2004**

Plaintiff Lynn Landes ("Plaintiff) brings this action for declaratory and injunctive relief against Defendants Margaret Tartaglione, in her official capacity as Chair of the City Commissioners of Philadelphia, Pedro A. Cortes, in his official capacity as Secretary of the Commonwealth of Pennsylvania, and John Ashcroft, in his official capacity as Attorney General of the United States (collectively "Defendants"). Now before the Court are Defendants' Motions to Dismiss for lack of standing or in the alternative for failure to state a claim on which relief can be granted. For the reasons stated below, the Court will grant these Motions.

I. FACTUAL BACKGROUND

Plaintiff, a registered voter in the City and County of Philadelphia, filed this action for declaratory and injunctive relief, challenging the use of absentee voting in elections for public office as a violation of "the Constitutional right to vote, to have votes counted properly, to observe the process effectively, and to have those

rights fully enforced." Compl.Para.3. Plaintiff brings her claims under Article I, Section 2 of the United States Constitution, the First Amendment, the Fourteenth Amendment and 42 U.S.C. §§ 1983, 1971, 1973a, 1973i, and 1973j. Plaintiff claims that the use of absentee voting offers substantial opportunity for voters fraud and coercion, and prevents election officials, the press, and the public from effectively observing the voting process. Id. Thus, Plaintiff contends that the use of absentee voting calls into question the results of past, present, and future elections. Id.

Plaintiff seeks a declaration that the local, state, and federal laws permitting absentee voting are unconstitutional, and seeks injunctions prohibiting Defendant Tartaglione from administering absentee voting, prohibiting Defendant Cortes from approving absentee voting, and compelling Defendant Ashcroft to enforce voting rights in Philadelphia. Id. Paragraphs 30-32. Defendants Cortes and Ashcroft individually filed motions to dismiss for lack of standing and for failure to state a claim on which relief can be granted; Defendant Tartaglione also filed a motion to dismiss.

II. LEGAL STANDARD

When deciding a motion to dismiss, the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). For the purpose of ruling on a motion to dismiss for lack of standing, the Court "must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." Warth v. Seldin, 422 U.S. 490, 501 (1975). However, pleadings "must be something more than an ingenious exercise into the conceivable." Id. At 509. Further, it is "the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." Id. At 518.

III. ANALYSIS

Defendants Cortes and Ashcroft move to dismiss on the grounds that Plaintiff lacks standing to challenge the absentee voting system. In essence, the question standing is whether the litigant is entitled to have the court decide the merits of the dispute. Warth, 402 U.S. at 498. A litigant must meet both the constitutional and prudential requirements for standing. 1

To establish constitutional standing, Plaintiff must: (1) suffer an injury in fact, meaning an actual or imminent, not hypothetical or conjectural, invasion of a particularized legally protected interest; (2) demonstrate a causal connection between the injury and the conduct complained of, meaning the injury must be traceable to the challenged action of Defendant and not the result of independent action by a third part; and, (3) show it likely that the injury will be remedied by a favorable decision. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992); Storino v. Borough of Point Pleasant Beach, 322 F.3d 293, 296 (3d cir. 2003). Indirect harm to Plaintiff may confer standing to sue, but it is substantially more difficult to meet the minimum requirements of Article III when only indirect harm is alleged. See Warth, 422 U.S. at 504-05.

To meet the prudential component of standing: (1) Plaintiff must assert her own rights and not the interests of third parties; (2) the claims asserted must not be "abstract questions of wide public significance which amount to generalized grievances shared and most appropriately addressed in the representative branches"; and , (3) the complaint must fall within the zone of interests protected by the statute or constitutional provision in question. Valley Forge Christian College v. American United for Separation of Church and State, Inc., 454 U.S. 474-75 (1982); Miller v. Nissan Motor Acceptance Corp., 362 F. 3d 209, 221 (3d Cir. 2004). The Supreme court has consistently held that a Plaintiff "raising only a generalized grievance about government – claiming only harm to his and every citizen's interest of proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large – does not state an Article III case or controversy." Lujan, 504 U.S. at 573-74; see also United States v. Richardson, 418 U.S. 166, 171 (1974)

(dismissing for lack of standing a taxpayer suit challenging the Government's failures to disclose CIA expenditures as the impact on the plaintiff was "plainly undifferentiated and common to all members of the public").

In the present case, Plaintiff fails to satisfy both constitutional and prudential standing requirements. The injuries Plaintiff asserts are not particularized, concrete, or imminent, but are abstract and hypothetical. Plaintiff's claim that she is injured by the use of absentee voting is a generalized grievance that may be shared by a large number of citizens, and is thus insufficient to confer standing. See Whitemore v. Arkansas, 495 U.S. 148, 160 (1990) (stating the generalized interest of all citizens in constitutional governance is an inadequate basis on which to grant standing and that as asserted right to have the Government act in accordance with law is not along sufficient to confer jurisdiction on a federal court); Schlesinger v. Reservists Comm. To Stop the War, 418 U.S. 208, 217 (1974).

While Plaintiff attacks Pennsylvania law permitting the use of absentee ballots in elections, she does not allege that her right to vote has been adversely affected by absentee voting. Plaintiff asserts only a generalized, theoretical concern that absentee ballots may result in fraud and other problems. See Compl. Paragraph 18. This is the sort of hypothetical harm that federal courts consistently refuse to address. See Storino, 322 F. 3d at 296-97 (stating allegations of contingent future injuries are not sufficient to establish standing).

Plaintiff's Complaint makes broad assertions that absentee voting is not transparent and thus invites voter fraud and coercion. Such concern involve questions of wide public significance that are most appropriately addressed by the legislative branch. If this Court ignored the concrete injury requirement for standing, we would be "discarding a principle fundamental to the separate and distinct constitutional role of [the judicial] branch – one of the essential elements that identifies those 'cases' and 'controversies' that are the business of the courts rather than of the political branches." Lujan, 504 U.S. at 576. "Vindicating the public

interest (including the public interest in Government observance of the Constitution and laws) is the function of Congress and the Chief Executive." Lujan, 504 U.S. at 576.

Because Plaintiff lacks standing, this action must be dismissed.

IV. CONCLUSION

For the foregoing reasons, the Court will grants Defendants' Motions to Dismiss. An appropriate Order follows.

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1 - Even when Article III "case or controversy" requirement are met, "a plaintiff may still lack standing under the prudential principles by which the judiciary seeks to avoid deciding questions of broad social import where no individual right would be vindicated and to limit access to federal courts to those litigants best suited to assert a particular claim." Gladstone Realtors v. Village of Bellwoood, 441 U.S. 91, 99-100 (1979).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYNN E. LANDES	:	**CIVIL ACTION**
	:	
v.	:	**NO. 04-CV-3164**
	:	
MARGARET TARTAGLIONE, *IN HER OFFICIAL CAPACITY AS CHAIR OF THE CITY COMMISSIONERS OF PHILADELPHIA*, et al.	:	

ORDER

AND NOW, THIS 25TH DAY OF October, 2004, upon consideration of Defendant Tartaglione's Motion to Dismiss (docket no. 15), Defendant Cortes's Motion to Dismiss (docket no. 17), Defendant Ashcroft's Motion to Dismiss (docket no. 20) and Plaintiff's Responses thereto, it is **ORDERED** that the Defendants' Motions to Dismiss are **GRANTED**.2

BY THE COURT:

BRUCE W. KAUFFMAN, J.

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2 Defendant Tartaglione did not raise the issue of standing in her motion to dismiss. However, as Plaintiff lacks standing to bring the entire action, the case is dismissed as to Defendant Tartaglione as well.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYNN E. LANDES	:	CIVIL ACTION
	:	
v.	:	NO. 04-CV-3163
	:	
MARGARET TARTAGLIONE, et al	:	

O'Neill, J. FILED October 28, 2004

MEMORANDUM

I. INTRODUCTION

Plaintiff Lynn E. Landes filed suit seeking a declaratory judgment that the local, state and federal laws and regulations that permit the use of voting machines are unconstitutional. She also seeks to enjoin the use of voting machines in elections for public office. Plaintiff claims the use of voting machines prevents election officials, the press and the public from effectively observing whether persons entitled to vote are being permitted to vote and whether their votes are being properly tabulated. Defendants are Margaret Tartaglione, chair of the City Commissioners of the City and County of Philadelphia, Pedro A. Cortes, Secretary of the Commonwealth of Pennsylvania and John Ashcroft, Attorney General of the United States. Now before me are motions to dismiss filed by all defendants. For the reasons stated below, I will grant defendants' motions.

II. BACKGROUND

The use of electronic voting systems and voting machines in Pennsylvania is permitted by 25 Pa. Stat. Ann. §§ 3002 and 3031.2. Plaintiff alleges that the computerized voting machines used in Philadelphia do not allow voters to cast their ballots directly and that they conceal the voting process. She further

asserts that voting machines may or may not be accurate and they are vulnerable to technical failure or vote manipulation. Plaintiff alleges that it is not possible to observe whether voting machines manipulate or switch votes.

Plaintiff alleges that she is a registered voter in the City and County of Philadelphia and a freelance journalist who specializes in voting systems and democracy issues. She does not specifically allege that she intends to vote in future elections in Philadelphia or that she has voted in previous elections in the city.

III. STANDARD FOR RULE 12(b)(6)

A Rule (b)(6) motion to dismiss examines the sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45 (1957). In determining the sufficiency of the complaint I must accept all of the plaintiff's well-pleaded factual allegations as true and draw all reasonable inferences therefrom. Graves v. Lowery, 117 F. 3d 723, 726 (3d Cir. 1997).

> The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.

Id., quoting Conley, 355 U.S at 47. I should not inquire as to whether the plaintiff will ultimately prevail, but only whether he is entitled to offer evidence to support his claims. See Oatway v. Am. Int'l Group, Inc., 325 F3d 184, 187 (3d Cir. 2003). "Thus, [I will] not grant a motion to dismiss 'unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Graves, 117 F. 3d at 726, quoting, Conley, 355 U.S. at 45-46.

IV. DISCUSSION

Plaintiff lacks standing to challenge the use of voting machines.1 In order to have standing to raise a claim before this court, plaintiff must establish that she meets both the three constitutional requirements for standing and the prudential considerations that courts have applied in determining standing. Storino v. Borough of Point Pleasant Beach, 322 F. 3d 292, 296 (3d Cir. 2003). To meet the constitutional requirements for standing, first plaintiff must have suffered an injury in fact – an invasion of a legally protected interest that is concrete and particularized, affecting the plaintiff in a person and individual way, and actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of. The injury must be traceable to the challenged action of the defendant and not the result of the independent action of a third party. Third, it must be likely and not speculative that the injury will be remedied by a favorable decision. Id., See also Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992). The prudential principles applied in determining whether there is standing are:

> (1) the Plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties; (2) even when the Plaintiff has alleged redressable injury sufficient to meet the requirements of Article III, the federal courts will not adjudicate abstract questions of wide public significance which amount to generalized grievances shared and most appropriately addressed in the representative branches; and (3) the Plaintiff's complaint must fall within the zone of interests to be protected or regulated by the state or constitutional guarantee in questions.

Miller v. Nissan Motor Acceptance Corp., 362 F.3d 209, 221 (3d Cir. 2004) (citations omitted). Plaintiff fails to satisfy both the constitutional and prudential standing requirements.

Plaintiff has not established she has suffered or will suffer an injury in fact. An injury in fact is "as invasion of a legally protected interest which is (a) concrete and particulazized and (b)

actual or imminent, not conjectural or hypothetical..." Storino v. Borough of Point Pleasant Beach, 322 F. 3d 293, 296 (3d Cir. 2003). In plaintiff's complaint, she alleges that she is a registered voter of the City and County of Philadelphia, but she fails to allege that she intends to vote by voting machine in the upcoming election. She also fails to allege that she has ever voted in any prior election either by voting machine or by other means. Absent such allegations, plaintiff cannot establish an injury in fact. Cf.. American Ass'n of People with Disabilities v. Hood, 278 F. Supp. 2d 1345, 1351-52 (M.D. Fla. 2003) (holding plaintiffs had standing where they were registered voters consistently voted in the past and intended to vote in future elections). 2

Even assuming plaintiff has voted in the past and will vote in this election, however, she alleges only a "conjectural or hypothetical" injury. She argues that voting machines are vulnerable to manipulation or technical failure, but she does not assert that the voting machines in question have actually suffered from these issues in the past or that they will definitively malfunction or be tampered with during the upcoming election. In Storino, 322 F.3d at 297-98, the Court held that the only injury demonstrated by plaintiffs was prospective and conjectural where plaintiffs alleged a local zoning ordinance would cause them future damages but the Court could identify various scenarios where the possibility of injury would be eliminated. The Court noted, "one cannot describe how the Storinos will be injured without beginning the explanation with the word 'if.' The prospective damages, described by the Storinos as certain, are, in reality, conjectural." Id.

Similarly, plaintiff's allegations here are not sufficient to demonstrate injury in fact because they are conjectural. If plaintiff's vote and the votes of all other voters in the upcoming election are correctly recorded, plaintiff will suffer no injury. Plaintiff's reliance on the terms "if" and "may" to couch her allegations of harm is a clear indication that the harm she alleges is merely speculative. Cf. Lujan v. Defenders of Wildlife, 504 U.S. 555, 564 (1992) (holding that plaintiffs' "'someday' intentions" to return to locations where they might be deprived of the

opportunity to observe endangered animals did "not support a finding of the 'actual or imminent' injury that our cases require").

Plaintiff argues, however, that the voting machines need not malfunction or be tampered with for an injury in fact to exit. She alleges she has been injured in past elections and will be injured in this election because voting machines prevent her from observing whether or not her vote has actually been cast. She asserts the use of voting machines deprives her of her rights to vote, to have votes counted properly, to observe the voting process effectively and to have those rights fully enforced under 42 U.S.C. Section 1983. Characterized in this manner plaintiff's alleged injury amounts to a "'generalized grievance' shared in substantially equal measure by all or a large class of citizens" and is not sufficient to confer standing. Warth v. Seldin, 422 U.S. 490, 499 (1975). See also Lujan, 504 U.S. at 560 (injury must be "concrete and particularized") (emphasis added): Whitemore v. Arkansas 495 U.S. 149, 160 (1990) ("the 'generalized interest of all citizens in constitutional governance' ...is an inadequate basis on which to grant" standing); Allen v. Wright, 468 U.S. 737, 754 (1984) ("an asserted right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdiction on a federal court"); Public Interest Research Group v. Magnesium Elektron, 123 F.3d 111, 121 (3d Cir. 1997)("The legal 'right' to have corporation obey environmental laws cannot, by itself, support standing.").

Because plaintiff has not established the required elements to demonstrate she has standing to challenge the use of voting machines in Philadelphia, I will grant defendants' motions to dismiss.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LYNN E. LANDES	:	CIVIL ACTION
	:	
v.	:	NO. 04-CV-3163
	:	
MARGARET TARTAGLIONE, et al	:	

ORDER

AND NOW, this 28th day of October 2004, after considering the motions to dismiss of defendants Margaret Tartaglione, Pedro A. Cortes and John Ashcroft and plaintiff's responses thereto and for the reasons set forth in the accompanying memorandum, it is ORDERED that:

1. defendant Margaret Tartaglione's motion to dismiss is GRANTED;
2. defendant Pedro A. Cortes's motion to dismiss is GRANTED;
3. defendant John Ashcroft's motion to dismiss is GRANTED;
4. plaintiff's complaint is DISMISSED with prejudice; and
5. plaintiff's motion for a temporary restraining order is DENIED as moot.

THOMAS N. O'NEILL, JR., J.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 04-4421 & 04-4439

LYNN E. LANDES,
Appellant

V.

MARGARET TARTAGLIONE, in her official capacity as chair of the city Commissioners of Philadelphia; PEDRO A. CORTES, in his official capacity as Secretary of the Commonwealth of Pennsylvania; *ALBERTO GONZALES, in his official capacity as the Attorney General of the United States (*Amended per Clerk's Order of 3/1/05)

On Appeal From the United States District Court
For the Eastern District of Philadelphia
(D.C. Civil Nos. 04-cv-03164 & o4-cv-03163)
District Judges: Honorable Bruce Kauffman and
Thomas N. O'Neill, Jr.

Submitted Under Third Circuit LAR 34.1(a)
August 5, 2005

Before: ROTH, MCKEE AND ALDISERT, Circuit Judges

(Filed: November 2, 2005)

OPINION

PER CURIAM

Lynne Landes filed two suits in the District Court for the Eastern District of Pennsylvania against state and federal government officials seeking injunctive and declaratory relief for alleged violations of Article I § 2 of the United States Constitution, the First Amendment, the Fourteenth Amendment, the Voting Rights Act of 1965 (42 U.S.C. §1971 et. Seq), and 42 U.S.C. § 1983. The first suit challenged the use of electronic voting machines, E.D. Pa. Civil No. 04-cv-03163, and the second suit challenged the use of absentee balloting, E.D. Pa. Civil No. 04-cv-03164. See Supplemental Appendix (Nos. 04-4421/4439) at 1-18, 48-57. In both cases, the District Court granted the government officials' motions to dismiss, finding that Landes lacked standing to bring suit. Appendix (No. 04-4421) at 3-7; Appendix (No. 04-4439) at 3-8. The appeal of the voting machine suit is docketed at No. 04-4439, and the absentee ballot suit is docketed at No. 04-4421. The appeals were consolidated for disposition.

Our review of the District Court's dismissal for lack of standing is plenary. Pennsylvania Psychiatric Soc. V. Green Spring Health Serv., Inc., 280 F. 3d 278, 282 (3d Cir. 2002).

A person seeking to invoke federal jurisdiction must establish her standing to sue under Article III § 2 of the Constitution, which limits the courts to hearing actual cases or controversies. Anjelino v. New York Times, 200 F. 3d 73, 87 (3d cir. 1999). To establish standing, the party must set forth, *inter alia*, specific facts indicating an injury in fact that is "concrete and particularized and actual or imminent, not conjectural or hypothetical." Storino v. Borough of Point Pleasant Beach, 322 F. 3d 293, 296 (3d Cir.2003); see also Raines v. Byrd, 521 U.S. 811, 818-20 (1997). Viewing the facts alleged in Landes' complaints in the light most favorable to her, see Pennsylvania Psychiatric Soc., 280 F.3d at 283, we agree with the District Court's conclusion that Landes does not allege a "concrete and particularized" injury, and thereby lacks standing. Accordingly, we will affirm.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 04-4421 & 04-4439

LYNN E. LANDES,
Appellant

V.

MARGARET TARTAGLIONE, in her official capacity as chair of the city Commissioners of Philadelphia; PEDRO A. CORTES, in his official capacity as Secretary of the Commonwealth of Pennsylvania; *ALBERTO GONZALES, in his official capacity as the Attorney General of the United States (*Amended per Clerk's Order of 3/1/05)

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District Judges: Honorable Bruce Kauffman and
Thomas N. O'Neill, Jr.

Submitted Under Third Circuit LAR 34.1(a)
August 5, 2005

Before: ROTH, MCKEE AND ALDISERT, Circuit Judges

JUDGEMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDER AND ADJUDGED by this court that the judgments of the district court entered October 26, 2004 and October 28, 2004 be and the same are hereby affirmed. Cost taxed against the Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

Maricia M. Waldron

Clerk

DATED: 2 November 2005

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

November 23, 2005

Nos. 04-4421, 04-4439

LYNN E. LANDES, Appellant
v.
MARGARET TARTAGLIONE, et al.
(E.D. of PA. Civil Nos. 04-cv-03163 & 04-cv-03164)

Present: ROTH, MCKEE AND ALDISERT,
Circuit Judges.

Motion by Appellant Pro Se to request that the Court order all parties to assume their own costs.

/s/ Anthony Infante
Anthony Infante
Case Manager 267-299-4916

Court's Opinion and Judgment filed on 11/02/05.
Response to Motion due 12/09/05.

ORDER

The foregoing motion is hereby denied.

By the Court,

/s/ Theodore A. McKee
Circuit Judge

Dated: 4 January 2006
AWI/CC: LEL
EMB
SJF
AEF
MSR
IGC

Lynn E. Landes, Pro Se

Dated this 20th Day of January, 2006

I do hereby certify that the foregoing is true to the best of my knowledge.

Lynn E. Landes, Pro Se
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Philadelphia, Pennsylvania 19107
(215) 629-3553